

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FaceToFace Biometrics, Inc.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:22 CV 429 CDP
)	
Apple, Inc.,)	
)	
Defendant.)	


MEMORANDUM AND ORDER

This matter is before the Court on defendant's motion to dismiss the complaint under Fed. R. Civ. P. 12(b)(6). ECF 15. Defendant contends that plaintiff's patent is invalid for failing to claim a patentable subject matter. ECF 16. In opposition to dismissal, plaintiff has provided the declaration of an expert witness attesting to the patent eligibility of the patent at issue in this case. ECF 22-3. "If, on a motion under Rule 12(b)(6) . . . matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56." Fed. R. Civ. P. 12(d).

Upon due consideration, the Court will not exclude the proffered declaration, thereby converting the motion to dismiss into one for summary judgment. The Court will provide defendant with an opportunity to submit any additional argument or evidence it deems appropriate in support of its motion.

Accordingly,

IT IS HEREBY ORDERED that defendant's motion to dismiss [15] is converted to a motion for summary judgment, and defendant may submit any additional argument or evidence in support of its motion by no later than **December 14, 2022**.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 14th day of November, 2022.